



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 14, 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2013-13

Dan Backer, Esq.
DB Capitol Strategies PLLC
717 King Street
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Alexandria, VA 22314

Mr. Paul D. Kamenar
Coolidge Reagan Foundation
1629 K Street, N.W.
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Washington, D.C. 20006

Dear Messrs. Backer and Kamenar:

We are responding to your advisory opinion request on behalf of Freshman Hold'em, Stutzman for Congress, Gardner for Congress 2012, Tom Reed for Congress, Denham for Congress, Benishek for Congress, Inc., Rodney for Congress, Duffy for Congress, Chris Gibson for Congress, Friends of Joe Heck, Friends of Dave Joyce, Pat Meehan for Congress, Scott Rigell for Congress, Rothfus for Congress, Jon Runyan for Congress, Inc., VoteTipton.com, Valadao for Congress, and Walorski for Congress, Inc. Joint Fundraising Committee (the "Committee"). The Committee asks whether it may use only "Freshman Hold'em JFC" and the URL of the Committee's website to identify the Committee in its disclaimers on emails, webpages, and printed materials. The Commission concludes that the Committee may not use only "Freshman Hold'em JFC," and its URL, www.FreshmanHoldem.com, to identify itself in its disclaimers as explained below.

Background

The facts presented in this advisory opinion are based on your letter received on August 22, 2013, and your emails dated August 29 and September 3, 2013.

The Committee is registered with the Commission as a joint fundraising committee.¹ The Committee maintains a website, www.FreshmanHoldem.com, on which it posts its joint fundraising notice, including the names of its participating candidates. The Committee's participants change from election cycle to election cycle based on the outcomes of elections. Currently, the Committee has 18 participating candidates; in the last election cycle, it had 30 participating candidates.

The Committee represents that it is commonly known as "Freshman Hold'em JFC," and that it is referred to as such in the URL for its website, on its webpages, emails, nametags, and invitations to Committee events, and by the media. The Committee plans to send out emails and printed materials — including nametags, donor cards, playing cards, and invitations — and to create webpages for events and other Committee business. The Committee asserts that its full name cannot be conveniently printed or practicably displayed in these communications because the amount of text necessary for a disclaimer using its full name would distract the reader's attention from the substance of the communication.

Question Presented

May the Committee use only "Freshman Hold'em JFC," and its URL, www.FreshmanHoldem.com, to identify itself in its disclaimers on emails, webpages, and printed materials?

Legal Analysis and Conclusion

No, the Committee may not use only "Freshman Hold'em JFC," and its URL, www.FreshmanHoldem.com, to identify itself in its disclaimers as explained below.

The Act and Commission regulations permit candidates and political committees to engage in joint fundraising by establishing a separate political committee to serve as their joint fundraising representative. 2 U.S.C. § 432(e)(3); 11 C.F.R. § 102.17(a). In raising funds for its participating candidates and political committees, the joint fundraising representative "shall collect contributions, pay fundraising costs from gross proceeds and from funds advanced by the participants, and disburse net proceeds to each participant," as well as comply with applicable recordkeeping and reporting requirements. 11 C.F.R. § 102.17(b)(1), (c)(4), (c)(8).

The Act and Commission regulations require all political committees — including joint fundraising committees — to identify themselves in their (1) "public communications," 11 C.F.R. § 100.26;² *see also* 2 U.S.C. § 431(22); (2) electronic mail

¹ The Committee's most recent Statement of Organization, dated March 15, 2013, is available at the Commission's Candidate and Committee Viewer, http://www.fec.gov/finance/disclosure/candcmte_info.shtml (Committee ID no. C00523985).

² A "public communication" is "a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the

of more than 500 substantially similar communications; and (3) websites available to the general public. *See* 2 U.S.C. § 441d(a)(1); 11 C.F.R. § 110.11(a). If a public communication, mass email, or website is paid for by an authorized committee of a candidate, the disclaimer must “clearly state that the communication has been paid for by the authorized political committee.” 11 C.F.R. § 110.11(b).

The Committee’s proposal to identify itself only as Freshman Hold’em JFC and www.freshmanholdem.com, without more, on its public communications, website, and mass emails would not be consistent with the Act and Commission regulations because it would not “give the reader . . . adequate notice of the identity of the person or political committee that paid for . . . the communication.” 11 C.F.R. § 110.11(c)(1). By definition, a joint fundraising committee is not an independent committee; rather, it is “established *solely* for the purpose of joint fundraising by” the candidates who form it. *See* 2 U.S.C. § 432(e)(3)(A)(ii) (emphasis added). In other words, a political committee such as the requestor here exists only to raise funds for its participants. A disclaimer identifying “Freshman Hold’em” as the source of the communications without further elaboration could potentially be misleading: It would suggest to recipients that a political committee with that name bore ultimate responsibility for the communications, when in reality it is the committee’s participants who sponsor and authorize those communications.³

The requestor analogizes its proposal to a Commission regulation that allows a separate segregated fund (“SSF”) to include in its name a “clearly recognized abbreviation or acronym by which the [SSF’s] connected organization is commonly known.” 11 C.F.R. § 102.14(c). But even an SSF that adopts a shortened name must nonetheless include both its full name and its shortened name in any disclaimers required by section 110.11. 11 C.F.R. § 102.14(c); *see* Advisory Opinion 2007-15 (GMAC) at 3; Advisory Opinion 2004-04 (AirPAC) at 2; Advisory Opinion 2000-34 (SAPPI PAC) at 2; Advisory Opinion 1999-20 (EQUI-PAC) at 2; Advisory Opinion 1980-23 (Agricultural and Dairy Educational Political Trust) at 2. Thus, the SSF-naming provision in 11 C.F.R. § 102.14(c) does not support the Committee’s request to omit its participating candidates’ names from its disclaimers.

The requestor asserts that including its full name in disclaimers on its emails, webpages, and printed materials is both inconvenient and impracticable. With regard to electronic communications such as emails and webpages, however, the Commission has explained that “the interests served by prompt public disclosure warrant application of the disclaimer provisions” to such communications “in light of the widespread use of this

general public, or any other form of general public political advertising,” but not “communications over the Internet, other than those placed for a fee on another person’s Web site.” 11 C.F.R. § 100.26.

³ This concern is particularly acute in this case, given that there is a “Freshman Hold’em” joint fundraising committee and a “Freshman Hold’em” political committee. *See* Candidate and Committee Viewer, http://www.fec.gov/finance/disclosure/candcmte_info.shtml (Committee ID no. C00523746).

technology in modern campaigning, and the relatively non-intrusive nature of disclaimer requirements.”⁴

Regarding printed materials, a political committee need not include a disclaimer unless the materials are “public communications” as defined in the Act and Commission regulations.⁵ For such communications, the Commission has promulgated a regulation to address situations in which issues of convenience and practicability warrant an exception from section 110.11’s disclaimer requirements: A political committee need not include *any* disclaimers (1) on items that are too small for the convenient printing of a disclaimer, such as bumper stickers, pins, buttons, or pens; or (2) on means of communication that by their nature make including a disclaimer impracticable, such as skywriting and water towers.⁶ The printed materials presented in this request — such as invitations and donor cards — are not inherently limited in size or of a nature that would render disclaimers impracticable.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. All advisory opinions cited herein are available on the Commission’s website.

On behalf of the Commission,

(signed)

Ellen L. Weintraub

Chair

⁴ Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,964 (Dec. 13, 2002); *see also* Internet Communications, 71 Fed. Reg. 18,589, 18,601 (Apr. 12, 2006) (“[T]he inclusion of a disclaimer statement [on emails] poses only a minimal burden for political committees.”). The emails and webpages at issue in this request are not electronic communications in which the inclusion of disclaimers may be inherently impracticable. *See, e.g.*, Advisory Opinion 2010-19 (Google) (concurring statement of Chairman Matthew S. Petersen).

⁵ The requestor states that including its full name in disclaimers on nametags and playing cards is burdensome. Because the definition of “public communication” generally would not include nametags and playing cards, *see* 11 C.F.R. § 100.26, these items would not need disclaimers.

⁶ 11 C.F.R. § 110.11(f)(1)(i)-(ii). The Committee does not ask whether any of its planned materials would qualify for this exemption.